HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL MISC. APPLICATION NO.473 OF 2005

1. Babu Ram
   S/o Sri Devi Prasad
2. Smt. Munni Devi
   W/o Sri Babu Ram
3. Rajesh Gupta
4. Mukesh Gupta
   Both sons of Sri Babu Ram
   All R/o Ward No.16,
   Town & P.S. Sitargunj
   District U. S. Nagar .....Applicants

Versus

1. State of Uttaranchal
2. Cheda Lal Gupta
   S/o Sri Chandra Sen Gupta
   R/o Ward No.16
   Town & P.S. Sitargunj
   District U. S. Nagar ....Respondents

Dated:- 29th July, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Sudhir Kumar learned counsel for the applicants and Sri G. S. Sandhu leared A.G.A.

2. The petition under section 482 Cr.P.C. has been filed for quashing the criminal complaint and proceedings of criminal case No.4664/2003 pending in the court of Ist Addl. Judicial Magistrate, U.S. Nagar.

3. The factual position in a nutshell is that an application under section 156(3) was moved before the Chief Judicial Magistrate, U. S. Nagar by the applicant No.1 against the respondent No.2, his wife & sons. Thereafter, the police investigated the matter and submitted the chargesheet against them under section 323, 504 I.P.C. On 25.11.2002, the respondent No.2 also filed an application under section 156(3) Cr.P.C. before the C.J.M., U. S. Nagar and the same was rejected by the C.J.M. Udham Singh Nagar. Thereafter, the respondent No.2 filed a complaint against the

applicants in the court of Chief Judicial Magistrate, U. S.Nagar under sections 323, 452, 504 & 506 I.P.C. and the same was registered as criminal case No.4664/2003. Statement under section 200 & 202 Cr.P.C. was recorded. Thereafter, the learned Magistrate summoned the applicants. Feeling aggrieved, the applicants have come up before this Court.

4. The learned counsel for the applicants further contended that all the names of the accused were not indicated in the application under section 156(3) Cr.P.C. filed by the respondent No.2. The learned counsel for the applicants further contended that the respondent No.2 has filed the complaint against them with a mala-fide intention to harass and harm the applicants. The complaint filed by the respondent No.2 was only a counter-blast of the prosecution launched by the applicant. The learned counsel for the applicant further contended that there is only few abrasion on the person of respondent No.2 and there is no prima-facie case against the applicants. The learned A.G.A. refuted the contention and contended that there is a cross report and the power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the evidence before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant and his witnesses that the ingredients of the offence or offences are disclosed and there is no

material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

5. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumstances. It must be exercised in the rarest of rare cases. It is also settled law that he court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

6. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

7. In view of the aforesaid decisions, I am of view that the trial court can only ascertain as to who is the aggressor. Therefore, the petition is devoid of merit. Therefore, the petition is dismissed in limine.

(J. C. S. Rawat, J.)

Dated 29.7.2005